1957

p. 27 E

File No. O. Prov. Muns
Corporations/57
Legal Department
A BRANCH

Subject:— Opinions under the Provincial Municipal Corporations Act, 1949

130-A

File No. O. Prov. Muns.
Corporation/57

Gen. 124

C O N T E N T S.

Legal Department File. No.O.Provl. Munis. Corporation/ 1951.

Sr.No.	R.I./O.No.	Subject	Pages.
		Opinions under the Provincial Municipal Corporations Act, 1949.	
1	321 / 5-1-51	Sec. 88(1) Contribution to Maharashtra Sahitya Samelan, Poona.	1-2
2	2778 / 13-2-51	Sec. 127(2) Question whether the Poona Municipal Corporation can levy a Tax on transfers of properties.	3-6
3	2259 / 6-2-51	Sch. FF - Para 4(3) and 19 Payment for services rendered to the Ghatkopar Kirol Municipality.	7-8
4	252 / 4-1-51	Secs. 129, 453: Apt. IV para 5(a) Sch. Ch. VIII etc.- Bombay Municipal Boroughs Act, 1925, Sec. 73 (x) Levy of property taxes and theatre and conveyance taxes by the Ahmedabad Municipal Corporation.	9-12
5	4106 / 13-3-51	- do -	13-16
6	3562 / 27-2-51	Octroi Rules of Poona Municipal Corporation- Question whether jaggery powder is liable to octroi as sugar.	17-20
7	6587 / 25-4-51	Question whether giving of retrospective operation to the amendments of octroi rules of the Poona Corporation so as to exempt from octroi all goods imported by the National Chemical Laboratory of India so far would be legally feasible.	21-22

1	2	3	4
8	555-Confl. 13-6-51	Ch. X Question regarding raising of a loan by Poona Municipal Corporation.	23-24
9	10097 25-6-51	App. IV, para 23. An order under- to enable the levy of the water tax in respect of non-residential buildings constructed after 30-6-50 for the period from 1st July 1950 to 31st March 1951- Question whether it would be legally feasible to issue such an order.	25-28
10	9661 19-6-51	Constitution of India, Act, 285 Railway (Local Authorities Taxation) Act, 1941- Levy of taxes by Poona Corporation on B.B. & C.I. Rly. properties.	29-30
11	10365 29-6-51	Chapter III, rule 3. Question whether the Municipal Corporation, Ahmedabad, can make temporary appointment to the post of Supdt. of Lighting and Power Plants.	31-34
12	10933 11-7-51	Secs. 66(10) and (42), 88 Question whether Corporation can spend Municipal fund for erecting a cricket stadium.	35-36

13	13699 27-8-51	Sec. 143(1) Question whether the Cycles owned and used by the policeman in Poona would be entitled to exemption from the tax on vehicles.	37-38
14	14859 18-9-51	Question whether under the Scheme sanctioned by the High Court the Deccan College Post-Graduate and Research Institute, Poona, is a Govt. Institute and as such can claim exemption from octroi of duty of the Poona Municipality.	39-40
15	19619 6-12-51	Question whether having granted leave to Shri Dalal, the Municipal Corporation, Ahmedabad, can appoint him as chief Auditor retrospectively after cancelling all the leave previously granted to him and treating the leave already enjoyed by him as leave due to him as if he had been in employment of the Corporation.	41-42
16	20186 18-12-51	Bombay Municipal Corporation Act, Sec. 144. Bombay Municipal Corporation Act, 1949, Sec.146. Question whether observance of the previsions is necessary for implementation of the agreement between the Govt. of India and the United States America regarding the exemption from the levy of octroi, cess, or any other duty.	43-46

Office of the R.L.A.

Bombay Provincial Municipal Corporations Act, 1949.

Section 88(1).

Contribution to Maharashtra Sahitya Sammelan, Poona.

Since the Bombay Porvincial Municipal Corporation Act, 1949 has come into operation in respect of the City of Poona, the provisions relevant for the purpose would be the provisions of that Act and not the provisions of the Bombay Municipal Boroughs Act. Under section 88(i) of the Bombay Provincial Municipal Corporation Act contributions from the Municipal Fund can be made to public institutions. The Maharashtra Sahitya Parishad appears to be a public institution to which contributions can be made from the Municipal Fund under section 88(i). However, it appears from the letter of the Municipal Commissioner at page 5 ante that the grant of Rs.1001/- has been proposed not to the Maharashtra Sahitya Parishad but to the Maharashtra Sahitya Sammelan. In other words, the grant proposed is intended to meet part of the expenses of the conference known as the Maharashtra Shitya Sammelan. Since the conference was held in May, 1949, no grant can be made retrospectively. Further, it appears that Sammelan cannot be construed as an institution within the meaning of section 88(i). In the circumstances, the grant proposed by the Municipal Commissioner, Poona City Municipality, would not be legally feasible.

Id/- P. M. LAD.
4/1/51
Remembrancer of Legal Affairs.

U.R.to L.S.G. & P.H.D.No.321, dated the 15th January 1951.

RHB.
27.6.

Legal Department.

Bombay Provincial Municipal Corporations Act,1949. Section 127(2).

Whether the Poona Municipal Corporation can levy a tax on transfers of properties.

The proposal of the Poona Municipal Corporation is that it should be empowered to impose a tax on the transfer of immoveable property situate within the limits of the Corporation. Section 127 of the Bombay Provincial Municipal Corporations Act, 1949, empowers the Corporation to impose a property tax. The Corporation can also be empowered to impose any tax which the State Legislature has power to impose under the Constitution. Under the Constitution the Corporation can be empowered to levy those taxes only which falls in List II in the Seventh Schedule and which the State Legislature is entitled to impose. The property tax which the Corporation can impose falls under the entry "Taxes on lands and buildings" in the said List. It does not include taxes on the transfer of lands and buildings. Entry No.6 in List III in the Seventh Schedule refers specifically to transfer of property, but the said List does not contain any taxation entry. Where the Constitution intended that taxes can be levied on 'transfers', it has done so in express terms in the case of the sale and purchase of goods. It is, therefore, clear that no levy of taxes on the transfers of property has been provided for by the Constitution. ~~The Commissioner, Poona Municipal Corporation.~~ The Commissioner, Poona Municipal Corporation, states that such tax is being levied by the Municipal Corporation of Madras. Probably the Commissioner has in view clause (h) of section 98 of the Madras City Municipal Act, 1919. That provision refers to duty on certain transfers of property in the shape of additional stamp duty. In the first place as in the Madras Act, section 127 of the Bombay Provincial

Municipal Corporation Act does not specifically provide for the levy of stamp duty as a municipal tax. If the proposal of the Commissioner is that similar stamp duty should be allowed to be levied by the Poona Municipal Corporation under clause (f) of section 127(2) of the Bombay Provincial Municipal Corporation Act, 1949, the Commissioner has overlooked the provisions of the Bombay Finance Act, 1932, under which enhanced stamp duties are being levied in certain cities in the State including Poona on the transfers of properties. These duties form part of the Government revenues of the State and whatever may have been the policy of the Madras Government, it has not so far been the policy of the Bombay Government to permit a local authority to appropriate stamp duties for the purpose of its municipal or local fund. It will be for the Local Self Government Department in consultation with the Finance Department to decide whether the proposal of the Commissioner of the Poona Municipal Corporation deserves consideration.

Ic/- J. R. DHURANDHAR. 13/2
Additional Secretary to Government.

U.R. to L.S.G.&P.H.D.No.2778, dated the 13th February 1951

RHB.
27.6.

Office of the R.L.A.

Bomeby Municipal Corporation Act.

Schedule FF.
Para 4(3) and 19.

Payment for services rendered to the Ghatkopar Kirol Municipality.

Para 19 of the Schedule FF to the Bombay Municipal (Extension of Limits) Act, 1950 cannot be resorted to in the present case as no difficulty has arisen in giving effect to the provisions of the Act. The claim of Shrimati Abhyankar against the ex-Ghatkopar-Kirol Borough Municipality being in the nature of a debt or obligation under para 4(3) of that Schedule FF will have to be paid by the Bombay Municipal Corporation. The fact that she was appointed without the post being sanctioned previously as required by the Bombay Municipal Boroughs Act would be an irregularity particularly when she was served in the post. She may, therefore, be asked to apply to the Commissioner, Bombay Municipal Corporation stating all the facts and making her claim accordingly.

Id/- J. R. DHURANDHAR.
5/2
Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D.No2259, dated the 6th February 1951.

RHB.
20.6.

Office of the R.L.A.

Bombay Provincial Municipal Corporations Act, 1949, sec.129, 453: App.IV, para. 5(a) Sch. Ch.VIII etc.

Bombay Municipal Boroughs Act,1925, sec.73(x).

Levy of property taxes and theatre and conveyance taxes by the Ahmedabad Municipal Corporation.

So far as the Theatre Tax and the Conveyance Tax are concerned, it appears there is no difficulty at all. These taxes were levied by the Ahmedabad Municipality under the Bombay Municipal Boroughs Act and they have been continued by clause 5(a) of Part I of the transitory provisions in Appendix IV to the Bombay Provincial Municipal Corporations Act, 1949. Consequently it would be competent for the Ahmedabad Municipal Corporation to continue to levy these taxes and in case there is any inconsistency between the rules framed by the Ahmedabad Municipal Borough and the rules contained in Chapter VIII of the rules in the Schedule to the Bombay Provincial Corporations Act, 1949, with regard to the collection of these taxes, the latter rules will prevail as they form part of the Act. (See section 453 and clause 5(a) of Part I in Appendix IV).

2. So far as the levy of the property tax is concerned, one of the taxes that would constitute the property tax under section 129 of the Bombay Provincial Municipal Corporations Act is the Water Tax. Under section 73, clause (x) of the Bombay Municipal Boroughs Act a general water rate or a special water rate or both, for water supplied by the Municipality, can be imposed in the form of a rate assessed on Buildings. It appears that the Ahmedabad Municipality has been levying a water rate and that rate would be continued under clause 5(a) of Part I of Appendix IV provided it is not inconsistent with the provisions of the Bombay Provincial Municipal Corporations Act and as stated above under the latter Act only water tax can be levied. It is not known whether there is any inconsistency between a water rate as is levied by the Ahmedabad Municipality and the water tax which can be levied under the Bombay Provincial.....1

Provincial Municipal Corporations Act. In this respect information regarding the quantum of the tax, the mode of levy and the rules pertaining to this tax would be necessary before the R.L.A. can give his opinion. The Local Self Government and Public Health Department should call for the necessary information and state all the facts of the case in detail and the relevant provisions of the Act and the rules to enable the R.L.A. to express his opinion.

Id/- P. M. LAD.
3/1/51
Remembrancer of Legal Affairs.

U.R. to L.SGG. & P.H.D.No.252, dated the 4th January 1951.

RHB.
28.6.

Legal Department.

In his opinion No.252 dated the 4th January 1951, the R.L.A. desired that the L.S.G. & P.H.D. should call for the necessary information and state all the facts of the case in detail and the relevant provisions of the Act and Rules to enable the R.L.A. to express his opinion. However, the L.S.G. & P.H.D. has merely forwarded a copy of the Rules of the Ahmedabad Municipality without stating all the facts of the case and discussing the relevant provisions of the Act.

2. The Ahmedabad Municipality was admittedly levying the water-rate. 'Tax' as defined in the Bombay Municipal Boroughs Act, 1925, includes a 'rate'. Consequently, the water-rate which was being levied by the Ahmedabad Municipality would be a water-tax thoug it was called a 'water-rate'. Under the Bombay Municipal Corporations Act, 1949, property taxes can be levied and one of such property taxes is the water-tax (see section 129)a)). Consequently, the water-rate which was being levied by the Ahmedabad Municipality can be continued to be levied as the water-tax under the Bombay Municipal Corporations Act, 1949 (see clause 5(a) in Appendix IV to the Bombay Municipal Corporations Act). However, the water rate was being levied by the Ahmedabad Municipality on the basis of (1) the net annual letting value in the case of residential buildings, (2) the capital value in the case of non-residential buildings belonging to Mills, Factories etc. and (3) on the basis of area in the case of stalls, booths, show-places etc. Under section 129(a) water-tax is leviable on the rateable value. 'Rateable value' as defined in section 2 clause (54) means "value of any building or land fixed in accordance with the provisions of this Act and the Rules for the purpose of assessment to property tax." Under Rule 7 in Chapter VIII of the Schedule "in order to fixing the rateable value of any building or land assessable to a property tax there shall

be.....

be deducted from the amount of the annual rent for which such land or building might reasonably be expected to let from year to year a sum equal to ten percent of the said annual rent, and the said deduction shall be in lieu of all allowance for repairs or on any other account whatever." It is clear from these provisions that the property tax can be levied only on the basis of the rateable value determined on the annual rental value of the property. The water-rate which was levied on the basis of the annual letting value of the residential buildings can be levied under the provisions of the new Act without any difficult, but so far as the levy of the water-rate on the basis of the capital value and space is concerned, it appears that unless the taxation rules in Chapter VIII to the Schedule are amended so as to allow the Municipality to levy water-tax even on these bases the water-rate as has been levied on the capital value or on the basis of space class 2 and class 3 permises cannot be continued. The Corporation may, therefore, take steps to amend the taxation rules in Chapter VIII to the Schedule for that purpose. (See section 454).

Id/- B. D. MIRCHANDANI.
Additional Secretary to Government.

U. R. to L.S.G. & P.H.D. No.4106, dated the 13th March 1951

RHB.
28.6.

Legal Department.

Octroi Rules of Poona Municipal Corporation.

Whether jaggery powder liable to octroi as sugar.

It appears that one Shri Narayandas Govinddas Shah of Poona has complained to Government against the octroi duty charged by the Poona City Municipal Corporation on jaggery powder as 'sugar'. The Poona Municipal Corporation is defending the levy of the octroi duty on jaggery powder as sugar on the ground that "jaggery powder is nothing but brown sugar and is actually used by the public as sugar and the difference in price between jaggery and jaggery-powder is about six annas per seer". The R.L.A. is requested to advise whether the contention of the Poona Municipal Corporation is valid.

2. Under Schedule 'A' to the Rules and By-laws of the Poona City Municipality articles which are liable to octroi are specified. Item 27 in this Schedule relates to jaggery (Gul) liable to the levy of octroi at annas 2 per maund, while item 28 relates to 'sugar' and octroi leviable is stated as annas 8 per maund. It is, therefore, clear that these items clearly make a distinction between jaggery and sugar. It is not stated that jaggery in item 27 is solid jaggery and not powdered jaggery. Apparently, therefore, as long as the article is jaggery - whether solid or powder - it will fall under item 27 and would be liable to octroi at the rate of annas 2 per maund. It may be that jaggery_powder is used by the public as asubstitute for sugar and its price may be much higher than solid jaggery, but these considerations would not be available so long as it is jaggery and the Schedule makes no distinction between powdered jaggery and solid jaggery. Besides, according to the well settled

rule of construction all statutes which impose pecuniary burdens have to be construed very strictly and in case of reasonable doubt the construction most beneficial to the subject is to be adopted. The Municipal Corporation would therefore not be justified in levying octroi duty on jaggery powder at the rate prescribed for sugar. However, if the Municipal Corporation insits on levying octroi on powdered jaggery as sugar, the only course left open would be to test the validity of such levy in a Court of law. Consequently, Shri Narayandas Govinddas Shah may be informed that the Municipality treats jaggery powder as sugar, and if he is dissatisfied with the levy of octroi on that basis, he may seek his remedy in a Court of law.

Id/- B.D.MIRCHANDANI
Additional Secretary to Government.

U.R.to L.SLG.& P.H.D.No.3562, dated the 27th February 1951.

RHB.
28.6.

Office of the R.L.A.

The proposal of the Government of India to give retrospective operation to the amendments of octroi rules of the Poona Corporation so as to exempt from octroi all goods imported by the National Chemical Laboratory of India so far would not be legally feasible, as no subordinate legislation can be made with retrospective effect. (cf. Additional Secretary's opinion No.14582 dated 15-12-1949). The view taken by the L.S.G. & P.H.D. is correct.

Id/- J.R.DHURANDHAR.
24/4
Remembrancer of Legal Affairs.

U.R. to L.S.G.& P.H.D.No.6587, dated the 25th April 1951.

RHB.
28.6.

Office of the R.L.A.

Raising of a Loan by Poona Municipal Corporation.

Bombay Provincial Municipal Corporations Act, 1949, Ch. X.

The question whether a public notification is necessary for raising the loan by the Poona Municipal Corporation by private negotiations as sanctioned by Government under Government Resolution, Finance Department No. 8107/33, dated 11th May 1951 has to be considered with reference to the relevent provisions of the Bombay Provincial Municipal Corporations Act, 1949 and those provisions will have to be strictly followed. "Where a statute lays down particular formalities that should be observed before the loan could be raised, all those formalities must be strictly observed; and the municipalities being artificial persons, they can only act through their agents, and parties dealing with the municipality must at their peril ascertain whether the proposed loan complies with all the formalities prescribed by statute" (Aiyangar's Law of of Municipal Corporations p.260). The borrowing powers of the Poona Municipal Corporation are regulated by provisions in Chapter X of the Bombay Provincial Municipal Corporations Act, 1949.

There is no provision in this Chapter prescribing a public notification for raising a loan and consequently a public notification is not legally necessary. Moreover, the Local Authorities Loans Act, 1914, whereunder a public notification is necessary will not be applicable to this loan as the loan is being raised under the powers conferred by the special enactment (vide proviso to s.7 of the Local Authorities Loans Act, 1914).

Id/- J.R.DHURANDHAR.
12/6
Remembrancer of Legal Affairs.

U.R.to F.D.NO.555-Confl., dated the 13th June 1951.
RHB.28.6.

Legal Department.

The Additional Secretary, L.D. had in his opinion No. 4106, dated 13th March 1951 expressed the view that the water-rate which was levied on the basis of the annual letting value of the residential buildings could continue to be levied under the provisions of the Bombay Provincial Municipal Corporations Act, 1949, without any difficulty, but so far as they levy of the rate on the basis of the capital value and space was concerned he stated that unless the taxation rules in Chapter VIII in the Schedule to the Act were amended so as to allow the Corporation to levy water-tax even on these bases the water rate as had been levied on the capital value or on the basis of space could not be continued. The Corporation was accordingly asked by the L.S.G. & U.H.D. to take steps to amend the taxation rules in Chapter VIII. The Municipal Commissioner, Ahmedabad has however reiterated his proposal that Government might issue an order under para. 23 in Appendix IV to the Bombay Provincial Municipal Corporations Act, 1949, so as to enable the levy of the water tax in respect of non-residential buildings contructed after 30th June 1950 for the period from 1st July 1950 to 31st March 1951. The R.L.A. is requested to advise whether it would be legally feasible to issue such an order.

2. In para. 2 of the Additional Secretary's opinion it has very clearly been pointed out that if the Ahmedabad Municipal Corporation wants to levy the water-tax in respect of non-residential buildings (i.e. buildings referred to in rule 322(2) of the Ahmedabad Municipal Code, Vol. I) on the basis of capital value or space, it was necessary to amend the taxation rules in Chapter VIII in the Schedule to the Bombay Provincial Municipal Corporations Act, 1949. The Municipal Commissioner has invited attention to Part I of the Corporation's resolution dated 9th October 1950 and submitted that the issue of an order by Government is necessary because any

amendment of the rules would not justify the validity of the levy of the water-tax with retrospective effect from 1st July 1950 to 31st March 1951. Presumably what can be said about the effect of the amendment of the rules would apply equally to an order issued by Government under para.23 of Appendix IV to the Act. Therefore an order contemplated by that para cannot authorize the levy of water tax with retrospective effect. Besides, under that para. the State Government can by an order do anything which appears to it necessary for the purposes of removing a difficulty which has arisen in giving effect to the provisions of the Act. It does not appear that this provision was intended to cover cases of the type at present arising where by an amendment of the rules in the Schedule it would have been feasible to levy the tax on the basis prevalent under the Boroughs Act. The proposal made by the Municipal Commissioner, Ahmedabad, is therefore not legally feasible.

Id/- B.D.MIRCHANDANI.
Additional Secretary to Government.

U.R.to L.S.G. & P.H.D.No.10097, dated the 25th June 1951.

RHB.
28.6.

Legal Department.

Constitution of India Article 285.

Railway(Local Authorities Taxation) Act, 1941.

Levy of taxes by Poona Corporation on B.B. & C.I. Railway Properties.

By Government of India, Railway Department, Notification No.F.43/TX-17(4)-1, dated 1st June 1944 issued under sub-section (1) of section 3 of the Railways (Local Authorities Taxation) Act, 1941, the administration of the B.B. & C.I. Railway was made liable to pay water rate, drainage taxes, sanitary taxes and conveyance tax to the Ahmedabad Municipality. The proposal of the Municipal Commissioner, Ahmedabad Municipal Corporation for the issue by the Government of India of a fresh notification under sub-section (1) of section (3) of the Act, in view of the different nomenclature and classification of taxes leviable under the Bombay Provincial Municipal Corporation Act being different is not feasible on account of Art. 285 of the Constitution. For clause (1) of that Article provides: "The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State." Saving clause (2) of that Article is as follows:- "Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State." It therefore follows that taxes, which in view of the Government of India Notification dated 1st June 1944, the Ahmedabad Municipality was hitherto levying, can continue to be levied by the Ahmedabad Corporation in view of clause (2) of Article 285 if in substance, though not in nomenclature, the taxes are the same. The fact that the borough municipality has been converted into a Corporation will not affect that position. However, no new or other taxes can be levied by the Corporation on the railway administration except under a law if and when made by parliament in this behalf------

behalf under clause (1) of Article 285.

Id/- B.D.MIRCHANDANI.

Additional Secretary to Government.

U?R. to L.S.G. & P.H.D.No.9661, dated the 19th June 1951.

RHB.
28.6.

Legal Department.

It is true that under section 53(1) of the Bombay Provincial Municipal Corporations Act, 1949, (Bom. LIX of 1949), the power to make appointments, whether temporary or permanent, to posts carrying the minimum monthly salary of Rs. 400/-p.m. (exclusive of allowances) or more, vests in the Corporation. But this power shall be subjet to the Rules contained in Chapter III of the Schedule to the Act. Rule 1 in that Chapter provides that save in the case of temporary appointments made under sub-section (7) of section 45 and in the case of acting appointments made under section 58 no person shall be appointed to any of the posts the power of appointment to which vests in the Corporation unless he possesses the qualifications prescribed in this behalf under rule 3. Rule 3 provides that subject to the provisions of the Act the Corporation shall from time to time prescribe the qualifications required for each post the power of appointment to which vests in the Corporation with the approval of the State Government who may in granting such approval make such modifications in, or additions to the qualifications prescribed by the Corporation as it deems fit. The temporary appointment proposed to be made to the post of Superintendent of Lighting and Power Plants is not one falling under sub-section (7) of section 45; nor is it one to be made under section 58. Consequently, the appointment to the post of Superintendent of Lighting and Power-plants, though temporary, will have to be made in accordance with rule 3 in Chapter III of the Schedule. Qualifications required for the post have not yet been prescribed under that rule. Consequently, unless the qualifications are prescribed by the Corporation with the sanction of Government no appointment to that post, even temporarily, can be made. The

Corporation.....

Corporation should, therefore, take steps to prescribe the qualifications with the sanction of Government and then proceed to make the appointment either temporary or permanent.

Id/- B.D.KIRCHANDANI.
Additional Secretary to Government.

U.R. to L.S.G. & P.H.D.No.10365, dated the 29th June 1951.

RHB.
28.6.

Office of the R.L.A.

Under section 66(10) and(42) of the Bombay Provincial/Municipal Corporations Act, 1949, read with section 88, the Corporation can spend its municipal fund for erecting a cricket stadium.

A fee of Rs.80/- may be charged for this opinion.

Id/- J.R.DHURANDHAR.
Remembrancer of Legal Affairs.

U.R. to L.S.G.&P.H.D.No.10933, dated the 11th July 1951.

RHB.
28.6.

Legal Department.

Under section 143(1) of the Bombay Provincial Municipal Corporations Act, 1949, the cycles owned and used by the policemen in Poona would not be entitled to exemption from the tax on vehicles even though the policemen receive a special cycle allowance from Government. The exemptions granted by section 143(1) cannot be further extended or liberalised by rules.

Id/- B.D.MIRCHANDANI.
Additional Secretary to Government.

U.R.to L.S.G.& P.H.D. No.13699, dated the 27th August 1951.

RHB.
28.6.

Legal Department.

The view taken by the Education Department is correct. Under the scheme sanctioned by the High Court the property of the Institute vests in the trustees and not in Government. Consequently no exemption from octroi duty of the Poona Municipality can be claimed by the Institute.

Id/- B.B.MIRCHANDANI.
Additional Secretary to Government.

U.R.to E.D.,No.14859, dated the 18thSeptember 1951.

RHB.
28.6.

Office of the R.L.A.

Para 11 of Appendix IV to the Bombay Provincial Municipal Corporations Act, 1949, empowers the Ahmedabad Municipal Corporation to appoint the person holding the office of the Chief Officer of the Old Ahmedabad Municipal Borough to any appointment under it to which he is qualified. The proposal of the Ahmedabad Municipal Corporation is to appoint Shri Dalal who was the Chief Officer of the Ahmedabad Municipal Borough as the Chief Auditor from 1st July 1950 when the Ahmedabad Municipal Corporation came into existence. The Corporation also proposes that the leave granted to him should be cancelled and he should be deemed to have been appointed as the Chief Auditor from that date. There is no question of law involved. The point is wholly an administrative one. Under Section 45 of the Bombay Provincial Municipal Corporations Act, 1949, the Corporation is competent to appoint the Chief Auditor. It is true that the Chief Auditor must have such qualificetions as may be prescribed by rules. If Shri Dalal has these qualificetions there would be no legal objection to his appointment with retrospective effect.

Id/- J.R.DHURANDHAR.
6/12
Remembrancer of Legal Affairs.

U.R.to L.S.G. & P.H.D.No19619, dated the 6th December 1951.

RHB.
28.6.

Office of the R.L.A.

It appears that the Government of India have entered into an agreement with the Government of the United States of America under which supplies of food grains and other food-stuffs, including milk powder, processed foodstuffs, etc., despatched for free distribution by approved relief organisations in the country should be exempt from the levy of any duties, tolls or taxes. Accordingly the Government of India have requested the State Governments to issue instructions to the local authorities concerned to waive levy of such taxes on these parcels. Under section 194 of the Bombay Municipal Corporation Act and section 146 of the Bombay Provincial Municipal Corporations Act, 1949, no octroi or town duty is levied on articles (1) which at the time of importation are certified by an officer of the Government concerned to be Government property, or (2) which are imported under a written declaration from the importer that the article are meant for the fulfilment of a contract with Government. R.L.A. is requested to advise whether the observance of the aforesaid provisions would be necessary for the implementation of the agreement between the Government of India and the United States of America regarding the exemption from the levy of octroi, cess or any other duty.

It appears from the agreement that the consignments will be received by the Regional Directors (Food) at Calcutta, Bombay and Madras, or by officers designated at the airports, as the case may be, on behalf of the voluntary relief and rehabilitation organisations of the United States of America recongnised by the Government of the United States of America and approved by the Government of India. It is, therefore, apparent that the consignments are not received by the Officers of Government as Government property, nor are they imported for the fulfilment of a contract with Government. Consequently, section 194 of the Bombay Municipal Corporation Act and section 146 of the Bombay

Provincial Municipal Corporations Act will have no application. The Agreement between the Government of India and the United States of America is in the nature of an international agreement for the implementation of which Parliament has power to make a law(see article 253 of the Constitution). But the Government of India does not appear to consider it necessary to make any law for the purpose. The Bombay Government may, therefore, issue instructions to the local authorities as desired by the Government of India not to levy any octroi or cess on the consignments imported under the agreement between the Government of India and the United States of America, emphasising that the aforesaid agreement is in the nature of an international agreement, the purpose of which being purely humanitarian and the implementation of it is necessary.

Id/- J.R.DHURANDHAR.
15/12
Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D.No20186, dated the 18th December 1951.

RHB.
28.6.